

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSEPH DESTEFANO,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of  
Social Security,

Defendant.

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NICHOLAS G. GARAUFIS, U.S. District Judge.

**MEMORANDUM & ORDER**  
05-CV-3534 (NGG) (RLM)

On December 28, 2007, the court referred Plaintiff Joseph Destefano's ("Plaintiff") motion for attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), and the Social Security Act, 42 U.S.C. § 406(b), to Magistrate Judge Roanne L. Mann for a Report and Recommendation ("R&R"). (Docket Entry # 26.)

On March 4, 2008, Magistrate Judge Mann issued an R&R recommending that Plaintiff's attorneys receive \$11,000 in fees under the EAJA, rather than the requested \$14,380.07, based on a detailed analysis of Plaintiff's attorneys' fee application. (*Id.* at 1, 6-12.) Magistrate Judge Mann also recommended approval of the twenty-five percent contingency-fee agreement between Plaintiff and his attorneys, finding it reasonable under the circumstances of this case. (*Id.* at 12-16.) A fee award based on this agreement would total \$55,191.38, representing twenty-five percent of the \$220,765.50 in back payments awarded to Plaintiff on remand to the Social Security Administration. (*Id.* at 3, 17.) Magistrate Judge Mann noted that Plaintiff's attorneys agreed, as they must, that the EAJA fee award would "offset plaintiff's liability for fees under the contingency-fee agreement." (*Id.* at 4 (*citing* *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002)).)

Finally, in conclusion, Magistrate Judge Mann stated that objections to the R&R must be filed with this court before March 18, 2008 and that failure to do so “may waive the right to appeal the district court’s order.” (R&R at 17.) To date, neither party has filed objections.

In reviewing an R&R, this court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). In order to accept a magistrate judge’s R&R where, as here, no timely objection has been made, the “court need only satisfy itself that there is no clear error on the face of the record.” Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001); see also Pizarro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (a district court may accept an R&R if it is “not facially erroneous”). Having carefully reviewed the R&R, the court is satisfied that there is no clear error on the face of the record. Magistrate Judge Mann’s R&R is very thorough, well reasoned, and well founded in applicable law. Therefore, this court adopts Magistrate Judge Mann’s R&R and notes that, by their failure to object, the parties have waived further judicial review of this Order. See Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002) (“failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision”).

Accordingly, Plaintiff's motion for attorneys' fees pursuant to the EAJA is granted in the amount of \$11,000. Plaintiff's motion for approval of the twenty-five percent contingent fee pursuant to 42 U.S.C. § 406(b)(1), resulting in an award of \$55,191.38, is granted. The awards are to be made payable to Plaintiff's attorneys. Upon receipt of the awards, Plaintiff's attorneys are directed to refund to Plaintiff the amount of \$11,000. See Joslyn v. Barnhart, 389 F. Supp. 2d 454, 457 (W.D.N.Y. 2005).

SO ORDERED.

Dated: May 9, 2008  
Brooklyn, N.Y.

s/ Nicholas G. Garaufis  
NICHOLAS G. GARAUFIS  
United States District Judge